

## **REMARKS**

### Specification

Paragraph [0080] has been amended as suggested in the Office Action.

### Claim Objections

Claim 14 has been amended as suggested in the Office Action. Claim 22 has been canceled.

### Section 112 Rejections

Claims 16, 38, and 48, and their dependent claims have been canceled, so the rejections are moot.

### Section 103 Rejections

In the Office Action, the claims were rejected as being obvious under 35 U.S.C. § 103 in view of the admitted prior art in the background section of the application and various other printed prior art references. In response, claims 1, 2, 5, 6, 11, 12, 14, 26, 27 and 37 have been amended, and claims 4, 7, 15-25, 28-36, and 38-66 have been canceled. Upon entry of this amendment, claims 1-3, 5-6, 8-14, 26-27, and 37 will be pending, of which claim 1 is the only independent claim. Applicants submit that the pending claims are not obvious for the reasons set forth below.

Amended claim 1 clarifies that the first contract does not give the supplier the right to make make-up deliveries following a period of force majeure. Amended claim 1 further clarifies that the reserve account is sufficiently funded to make debt service

payments on the debt instruments when the first entity is unable to supply the commodity to the recipient because of a force majeure condition for a predetermined time period during the term of the first supply contract.

The Office Action generally addressed these limitations in rejecting now-canceled claim 63. The Office Action stated that because the description of the PPA in the background section of the application contains no mention of force majeure makeup provisions, they lack force majeure makeup provisions. This rationale is in error for at least two reasons.

- First, it is improper for the Office to infer that the prior art PPA lacks a certain characteristic merely because the description of the prior art PPA does expressly state that it has the characteristic. See e.g., MPEP § 2112 ("The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.") (emphasis in original).

- Second, the prior art transaction that the background section of the application is describing did in fact have a supply contract that had force majeure make-up provisions. Specifically, the transaction structure described at ¶ [0014] *et seq.* of the present application generally describes the transaction structure for the Utility Contract Funding, LLC offering. The prospectus for this offering was submitted with applicants' IDS filed January 8, 2004. See Utility Contract Funding, LLC offering memorandum, June 27, 2002, listed on Form 1449A, filed January 8, 2004. The offering memorandum, at page 43, makes clear that the power purchase agreement for this transaction in fact had a make-up deliveries provision for force majeure conditions.

Without the ability to make make-up deliveries in the case of a force majeure condition, as in amended claim 1, the first entity may not be able to make deliveries during a force majeure condition or make up for those lost deliveries following remediation of the force majeure condition. This would diminish income to the first entity, thereby impairing its ability to make the payments on the issued debt instruments, thereby making the debt instrument less attractive to potential investors. Therefore, in order to make the debt instruments more attractive to potential investors, pursuant to claim 1, the first entity has a reserve account, separate from the collections account, that is sufficiently funded to make debt service payments on the debt instruments when the first entity is unable to supply the commodity to the recipient because of a force majeure condition for a predetermined time period during the term of the first supply contract. This limitation is not taught or suggested by the prior art because the prior art has no need for it since its PPA has a make-up deliveries clause for force majeure conditions.

The other prior art references cited in the Office Action do not teach or suggest this limitation either.

Therefore, for at least these reasons, applicants submit that claim 1 and its dependent claims are not obvious in view of the cited prior art.

### **CONCLUSION**

Applicant respectfully submits that all of the claims presented in the present application are in condition for allowance. Applicant's present amendment should not in any way be taken as acquiescence to any of the specific assertions, statements, etc.,

presented in the Office Action not explicitly addressed herein. Applicant reserves the right to address specifically all such assertions and statements in subsequent responses. Applicant also reserves the right to seek claims of a broader or different scope in a continuation application.

Applicant does not otherwise concede the correctness of the Office Action's rejection with respect to any of the dependent claims. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to distinguish further the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

Applicant has made a diligent effort to properly respond to the Office Action and believe that the claims are in condition for allowance. If the Examiner has any remaining concerns, the Examiner is invited to contact the undersigned at the telephone number set forth below so that such concerns may be expeditiously addressed.

Respectfully submitted,



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Date: August 28, 2008

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